

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:  
Consumer Advocate and Protection Division  
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Nashville, TN 37202

January 24, 2003

Hon. Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Re: Proposed Rules for the Provisioning of Tariff Term Plans and Special Contracts,  
Docket No. 00-00702

Dear Chairman Kyle:

Enclosed for filing in the above-referenced docket are the original and fourteen copies of the Consumer Advocate and Protection Division's Motion for the Authority to Take Administrative Notice of (1) the Kentucky Public Service Commission's Order opening a docket "to investigate the use of, or non-use of, contract service arrangements ("CSAs") by telecommunications carriers subject to our jurisdiction," and (2) the Kentucky Public Service Commission's Order in which the Commission "ordered that BellSouth shall provide PRIs and SPIS.net at the contract terms and conditions specified in the contract with Hopkinsville Electric", on the ground that the two customers were similarly situated. Copies are being provided to counsel of record.

Sincerely,

*Vance L. Broemel*  
VANCE BROEMEL,  
Assistant Attorney General

cc: Counsel of Record  
61682

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

**PROPOSED RULES FOR THE  
PROVISIONING OF TARIFF  
TERM PLANS AND SPECIAL  
CONTRACTS,**

)  
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)  
)

**Docket No. 00-00702**

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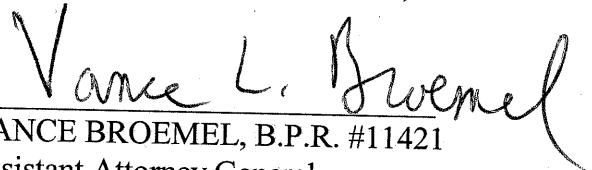
**MOTION FOR THE AUTHORITY TO TAKE ADMINISTRATIVE NOTICE OF  
KENTUCKY PSC ORDERS**

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The Consumer Advocate and Protection Division hereby files this request that the Authority take administrative notice of (1) the Kentucky Public Service Commission's Order opening a docket "to investigate the use of, or non-use of, contract service arrangements ("CSAs") by telecommunications carriers subject to our jurisdiction," and (2) the Kentucky Public Service Commission's Order in which the Commission "ordered that BellSouth shall provide PRIs and SPIS.net at the contract terms and conditions specified in the contract with Hopkinsville Electric", on the grounds that the two customers were similarly situated.

These Orders (attached as Exhibits 1 and 2) are being offered to show that state regulatory bodies other than Tennessee are concerned with issues arising from the use of CSAs, particularly the issue of whether similarly situated customers should receive the same rates.

RESPECTFULLY SUBMITTED,



VANCE BROEMEL, B.P.R. #11421

Assistant Attorney General

Office of the Attorney General

Consumer Advocate and Protection Division

P.O. Box 20207

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INQUIRY INTO THE USE OF CONTRACT SERVICE )  
ARRANGEMENTS BY TELECOMMUNICATIONS )  
CARRIERS IN KENTUCKY )

CASE NO.  
2002-00456

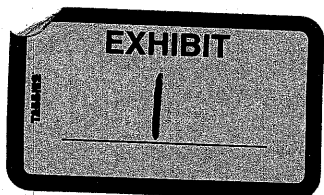
O R D E R

The Commission opens this docket to investigate the use of, or non-use of, contract service arrangements ("CSAs") by telecommunications carriers subject to our jurisdiction. The pro-competitive provisions of KRS 278.512 and the Telecommunications Act of 1996, as well as KRS 278.160 and KRS 278.170, will provide the guiding principles in this proceeding. All incumbent local exchange carriers ("ILECs") and those competitive local exchange carriers ("CLECs") that are active before this Commission are hereby made parties hereto.<sup>1</sup> In addition, intervention by customers with experience in regard to telecommunications CSA practices is welcomed.

Technological advances, together with extensive changes in the legal treatment of telecommunications utilities, have necessitated numerous regulatory adjustments by this and other state public utility commissions. We have been called upon to reduce

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<sup>1</sup> The Commission recognizes that numerous CLECs authorized to provide service in Kentucky are small operations with limited resources. Accordingly, although a copy of this Order shall be sent to all ILECs and CLECs authorized to serve customers in Kentucky, only the names of those ILECs and CLECs that regularly participate in Commission proceedings are listed in Appendix A, which shall serve as the active service list of this proceeding. Carriers whose names do not appear on this service list may, by letter, request to be added to the active service list and to participate fully in this proceeding. The service list also includes the parties who participated in Case Nos. 2001-00068, 2001-00099, and 2001-00077.



regulation while protecting Kentucky's telecommunications customers and ensuring fair and equitable treatment of both incumbent carriers and new market entrants. It is perhaps inevitable that we now find it necessary to determine whether some of our decisions relaxing the regulatory regime pursuant to KRS 278.512 may inadvertently have created problems.

For example, we held in Case No. 2001-00077<sup>2</sup> that BellSouth Telecommunications, Inc. ("BellSouth") need no longer file its increasingly numerous CSAs for our review, granting a deviation from Administrative Regulation 807 KAR 5:011, Section 13, which requires every utility to file "true copies of all special contracts entered into governing utility service." Instead, we have accepted summaries of those CSAs that do not include item pricing for the services sold. In relaxing our requirements in regard to BellSouth's CSAs, we intended to ensure that BellSouth was not unfairly subject to regulatory requirements that disadvantaged it as opposed to its competitors. Moreover, it appeared at that time that, given the competitive conditions of the marketplace, detailed review of each CSA was no longer necessary. However, our action in that docket may well have disadvantaged telecommunications customers and CLECs who no longer are able to review the full CSAs.

We will investigate pricing practices in regard to CSAs, and to that end, we incorporate herein the respective records of Case Nos. 2001-00099<sup>3</sup> and 2001-00068.<sup>4</sup>

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<sup>2</sup> Case No. 2001-00077, BellSouth Telecommunications, Inc.'s Proposed New Procedures For Filing Contract Service Arrangements and Promotions.

<sup>3</sup> Case No. 2001-00099, SPIS.net v. BellSouth Telecommunications, Inc.

<sup>4</sup> Case No. 2001-00068, Computer Innovations v. BellSouth Telecommunications, Inc.

In each of these cases, an Internet service provider ("ISP") filed a complaint objecting to BellSouth's refusal to provide it the lower rates it had provided to another ISP. In both cases, we found that the two ISPs in question should, in fact, have received the same rate on the same terms as the third ISP. Consideration of the questions raised, and evidence presented, in these cases have led us to question whether BellSouth and other carriers are providing services under CSAs when they should be providing service at tariffed rates. To the extent CSAs are appropriate, we welcome comment as to standards that should limit their use and provide objective criteria for pricing services differently.

In Case No. 2001-00099, we addressed, among other issues, the proper role of competition in determining prices for service, and the tension existing between carriers' legitimate need to price services based in part on competition and the legislative mandate that all similarly situated customers be treated equally. However, we set no specific, objective criteria in that case: so broad an issue requires that we amass a broad record upon which an ultimate decision, which will be applicable to all, may appropriately be based. Accordingly, we concluded only that, on the facts of that case, SPIS.net was entitled to the rate given to an ISP in the same locality. In this case, we will explore the policy implications associated with setting parameters, based on objective criteria, that should govern a carrier's ability to set prices based on competitive offers. We will consider whether the existence of competition should be a factor in determining whether two customers are "similarly situated" so that they are entitled to the same rate.

We wish to explore the legal and policy implications of creating a special tariff for which only one unnamed customer, in fact, qualifies. Earlier this year, BellSouth filed a switched access tariff that became effective on June 28, 2002. Upon informal inquiry, it became apparent that this tariff, like a CSA, was the product of negotiations with a single long-distance carrier and had been designed specifically to provide discounts of up to 35 percent to that carrier. The tariff, on its terms, was available to persons who are similarly situated for only 30 days after its effective date. Moreover, the discounts pursuant to this "contract tariff" are based on percentage growth rather than actual volume growth. On its face the tariff is not available to BellSouth's highest volume users but only to those who obtain a specified level of growth each year.

In order to determine appropriate policies, to safeguard the public interest regarding contract service arrangements, and to determine what, if any, amendments to Administrative Regulation 807 KAR 5:011, Section 13, are appropriate, we require telecommunications carriers named in Appendix A hereto to respond to the data requests contained in Appendix C hereto by no later than February 5, 2003, and to comply with the procedural schedule attached hereto as Appendix B. While we expect full compliance from Kentucky's ILECs and from the larger CLECs who are active before this Commission, a carrier that does not wish to participate in this proceeding may file a statement to that effect that includes a full explanation of its reasons therefor. We shall review each statement so filed and, if necessary, enter orders requiring information, if not full participation, from each carrier so filing.

IT IS THEREFORE ORDERED that:

1. Each telecommunications carrier named in the service list hereto shall respond to the information requested in Appendix C hereto no later than February 5, 2003 or, in the alternative, shall file with the Commission a statement that it does not wish to participate in this proceeding, together with a full explanation therefor.
2. Each telecommunications carrier named in the service list hereto shall comply with the procedural schedule in Appendix B hereto or, in the alternative, shall file with the Commission a statement that it does not wish to participate in this proceeding.
3. Any party filing testimony shall file an original and 5 copies. The original and at least three copies of the testimony shall be filed as follows:
  - a. Together with cover letter listing each person presenting testimony.
  - b. Bound in 3-ring binders or with any other fastener which readily opens and closes to facilitate easy copying.
  - c. Each witness's testimony should be tabbed.
  - d. Every exhibit to each witness's testimony should be appropriately marked.
4. All requests for information and responses thereto shall be appropriately indexed. All responses shall include the name of the witness who will be responsible for responding to questions related to the information, with copies to all parties of record and an original and 5 copies to the Commission.

Done at Frankfort, Kentucky, this 19<sup>th</sup> day of December, 2002.

By the Commission

ATTEST:

  
Executive Director



APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2002-00456 DATED December 19, 2002

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APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2002-00456 DATED December, 19, 2002

PROCEDURAL SCHEDULE

Responses to the information requested in Appendix C  
are due no later than ..... 02/05/03

Parties shall submit data requests to other parties no later than ..... 03/26/03

Responses to parties' data requests are  
due no later than ..... 04/15/03

Parties shall submit prefiled testimony and a list of  
witnesses and their qualifications no later than ..... 04/30/03

Parties shall submit prefiled rebuttal testimony  
no later than ..... 05/21/03

Public Hearing shall begin at 9:00 a.m., Eastern Daylight Time,  
at the Commission's offices at 211 Sower Boulevard,  
Frankfort, Kentucky ..... 06/17/03

## APPENDIX C

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2002-00456 DATED December 19, 2002

1. Provide full and complete copies of all CSAs entered during 2001 and 2002, or, in the alternative, if such CSAs are on file with the Commission, a list of those CSAs and their effective dates. For each CSA, provide:
  - a. Customer name.
  - b. Effective date.
  - c. Expiration date.
  - d. Description of services included.
  - e. Unique conditions involving the service.
  - f. Total value of the contract.
  - g. A price-out of the contract.
  - h. A price-out of the same services as provided under tariff, if applicable.
  - i. The net savings to the customer in total and on a per unit basis.
  - j. Details concerning installation or other fees waived pursuant to the CSA.
  - k. Details concerning recurring rates suspended or waived pursuant to the CSA.
2. Provide a narrative description of your policies regarding entry into CSAs with specific customers, including a description of the manner in which those CSAs are filed or reported to the commissions for the states in which you operate. If you operate

in multiple jurisdictions, compare and contrast applicable state requirements. Provide citations to applicable rules in other jurisdictions.

3. To what extent should a telecommunications carrier be permitted to price its services differently depending on the existence of a competitor that is willing to serve some customers but not others?

a. If you believe different pricing in such instances is appropriate, what level of objective evidence showing the actual existence of a competitive offer for the services in question should be required?

b. If you do not believe that different pricing in such instances is appropriate, what would be the financial result to carriers who would no longer be able to price services based on competition?

4. Would you support or oppose a policy requiring that all customers for regulated services in the same geographic area or market receive the same prices, on the theory that if a competitor is in the area it may reasonably be assumed that a competitive offer is available to all customers in the area?

a. If such a policy were adopted, how should the "geographic area" or "market" for which prices should be uniform be defined?

b. If you oppose such a policy, explain the reasons for your opposition.

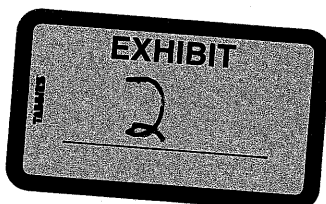
5. Would a requirement that all CSAs be filed publicly with the Commission ensure transparency and permit both customers and CLECs the access necessary to buy, resell, and notify the Commission of alleged violations of law?

6. What criteria should govern whether a regulated service should be sold by tariff only or by CSA? Explain fully.
7. Discuss the impact on competition in particular and on the telecommunications industry in Kentucky in general that would result from deregulation of CSAs.
8. At what level of availability of competitive alternatives in a given market should a service be deregulated pursuant to KRS 278.512? Is it feasible to deregulate a service in one market area of Kentucky and not in another?
9. What procedures should take place during a Commission case to determine whether a service is sufficiently competitive to be deregulated?



In the Matter of:

CASE NO.  
2001-00099



The service at issue constitutes a "local call"<sup>1</sup> from the ISP customer at his computer to the BellSouth switch to the Internet service provider's routers (its point of presence ["POP"]). SPIS.net has advanced two arguments against the terms upon which it has obtained PRI service. First, SPIS.net alleges that, because BellSouth offered to reduce the rate of a regulated service (PRI) if SPIS.net would pay more for an unregulated service (T3 dedicated line), BellSouth has violated KRS 278.514 (prohibiting subsidization of an unregulated service by a regulated one). SPIS.net has not, however, shown a violation of KRS 278.514. There is no indication whatever that BellSouth has offered any service below its cost. Accordingly, there has been no cross-subsidization of unregulated services by regulated services. SPIS.net's second argument is more substantial. It claims that the terms upon which it receives the service have subjected it to an "unreasonable disadvantage" pursuant to KRS 278.170 because it cannot obtain the PRI rate given to a competitor.

There is no dispute that PRI service is regulated; that it appears in BellSouth's tariff; and that BellSouth charges different customers different prices for the service. The issue is whether the difference in the prices is "reasonable."

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<sup>1</sup> Case No. 2001-00099, Transcript of Evidence ("TE") at 60.

From April 1997 to October 2001, the BellSouth tariff price for PRI service was \$1,483.<sup>2</sup> However, as BellSouth's witness testified, "[u]nder contract pricing, that would begin to go down a little bit."<sup>3</sup> In January 1999, SPIS.net signed a contract service arrangement ("CSA") and received the service for \$1,290.19 per month. In January of 2000, SPIS.net received a new CSA pricing the service at \$1,165.30 per month. On April 16, 2001, it signed yet another CSA pricing the service at \$741.41.<sup>4</sup> Approximately 8 months previously, on August 7, 2000, Hopkinsville Electric, a competing ISP in SPIS.net's area, had entered into a CSA pricing PRI service at \$650.

SPIS.net learned of the \$650 rate from Hopkinsville Electric employees. When SPIS.net asked BellSouth for the \$650 rate, it was refused. SPIS.net's witness alleges that, because its competitors can sell ISP service more cheaply than SPIS.net can, it was "forced to close its Hopkinsville network in January 2001."<sup>5</sup> SPIS.net continues to provide ISP service in Madisonville.

The predominant issue in this case is SPIS.net's allegation that BellSouth has accorded an unreasonable preference, in violation of KRS 278.170, to Hopkinsville Electric. BellSouth responds that the difference in price is reasonable because it is entitled to provide lower prices for the same service to customers who can obtain a better deal from a BellSouth competitor. In its Answer to the Complaint, BellSouth explains that the "Hopkinsville Electric contract was in response to...a BellSouth

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<sup>2</sup> TE at 97.

<sup>3</sup> TE at 96.

<sup>4</sup> TE at 98.

<sup>5</sup> SPIS.net Brief at 16.

competitor, AT&T.”<sup>6</sup> It also asserts that SPIS.net should be held to the 2-year term of its January 2000 contract, and that SPIS.net’s decision to enter into the contract was simply a “bad business decision.”<sup>7</sup> There can be no unreasonable preference unless the customers receiving different prices are “comparable,” BellSouth argues; and SPIS.net was not “comparable” to Hopkinsville Electric because SPIS.net already had a contract with BellSouth and Hopkinsville Electric did not.<sup>8</sup> BellSouth asserts that, at the time the January 2000 contract was entered into by SPIS.net, there was no evidence that any other PRI customer was receiving more favorable rates; that discrimination must exist at the time the CSA comes into existence; and that, therefore, there was no discrimination when the January 2000 contract was executed.<sup>9</sup>

BellSouth’s argument on this point is persuasive, as far as it goes. However, BellSouth itself reopened contract negotiations with the Complainant and signed, on April 16, 2001, *after* the date of its contract with Hopkinsville Electric, a new contract

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<sup>6</sup> Case No. 2001-00099, BellSouth Answer, at Paragraph 13. See also TE at 100, testimony of Tony Taylor (“The competitor in that situation was AT&T with a recurring price of \$575 and no charge for nonrecurring or installation charges.”). SPIS.net claims there was no such offer, and that no such offer was possible, as Cinergy stated that the \$650 price was below its cost. TE at 81; SPIS.net Brief at 9-10. SPIS.net also disputes BellSouth’s assertions that it lowered the SPIS.net prices, changing existing contracts, based on competitive offers. SPIS.net said it did not receive such offers in all instances in which BellSouth changed SPIS.net’s contract prices. TE at 64; SPIS.net Brief at 10-11.

<sup>7</sup> BellSouth Brief at 7.

<sup>8</sup> BellSouth Answer, Case No. 2001-00099, at Paragraph 14. SPIS.net’s response is that BellSouth itself has frequently changed contract terms before the expiration of the contract.

<sup>9</sup> BellSouth Reply Brief at 3-4.

with Complainant in which PRIs were priced at \$741.44.<sup>10</sup> As BellSouth correctly points out, when it is “unlawful for any person...to discriminate in price between different purchasers of commodities,” the contract’s provisions must be “evaluated at the time the contract is made.”<sup>11</sup> The current SPIS.net PRI contract was signed April 16, 2001, at a time when Hopkinsville Electric had already received the \$650 rate. In addition, BellSouth’s witness, Tony Taylor, stated that there are “not substantial differences in terms of the volume” between SPIS.net and Hopkinsville Electric.<sup>12</sup>

The remaining issue is the extent to which the existence of a competitive offer is a factor in determining whether two customers are similarly situated so that they should receive service at the same price.

KRS 278.160, which codifies the filed rate doctrine in Kentucky, requires all terms and conditions for a utility’s service to appear in its filed rate schedules. The filed rate doctrine exists to “prevent utilities from discriminating in the prices they charge for the same service among different ratepayers.” Mincron SBC Corp. v. WorldCom, Inc., 994 S.W.2d 785 (Tex. App. Dist. 1 1999). The court in Advantel, LLC v. AT&T Corp., 118 F.Supp.2d 680 (E.D. Va. 2000) declared that, under federal antidiscrimination law and the filed-rate doctrine, “...separate agreements between carriers are permitted, but only under circumstances that do not affect the rate filed under the tariff.... Because the services in issue were covered by a filed tariff, the parties were precluded from entering

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<sup>10</sup> BellSouth Reply Brief, Exhibit 1.

<sup>11</sup> BellSouth Reply Brief, at 3, quoting Texas Gulf Sulphur Co. v. J.R. Simplot Co., 418 F.2d 793, 806 (9<sup>th</sup> Cir. 1969).

<sup>12</sup> TE at 184.

into separate contractual arrangements to modify the tariff rates.” (Citations omitted.)

This Commission, like other state commissions, has historically accepted different pricing in special contracts based upon volume and term commitments. However, it has been understood that, pursuant to KRS 278.170, customers who are willing to agree to the commitments in another customer’s contract are entitled to the terms of that contract. KRS 278.170(1) provides as follows:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

We have not previously held that two customers are not similarly situated for purposes of receiving the same price for a utility service on the sole basis that one has received a competitive offer while another has not.<sup>13</sup>

We have, however, permitted non-telecommunications utilities to enter into lower-than-tariffed rate special contracts with customers who realistically could obtain service from another supplier. Other state commissions have done the same. In Consumers Power Co. v. Michigan Public Service Comm’n, 572 N.W.2d 222 (Mich. App. 1997), for example, a court upheld a public utility commission’s decision to permit a gas utility to enter into such a contract with an industrial customer who threatened bypass. The commission had so ruled on the basis that the ratepayers would be better

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<sup>13</sup> We have, of course, accepted special telecommunications pricing for the purpose of meeting competition for a service; however, that acceptance has not been extended to a policy of individual pricing based upon a specific customer’s alleged individual experience with competitive offers without regard to geographic proximity or eligibility for the same competitive offers.

served if the large customer stayed on the system and paid at least some of the fixed costs of the system. The Michigan Commission, however, required the utility's shareholders to bear some, and perhaps all, of any revenue shortfall that resulted; and the court upheld the Michigan Commission's discretion to do so. SPIS.net emphasizes in its brief the safeguards that apply when gas utilities provide special rates to meet competition, citing Administrative Case No. 297<sup>14</sup> and the Columbia Gas tariff requiring, among other things, a customer affidavit demonstrating that it has installed operable capacity for long-term use of an alternative energy source.<sup>15</sup> SPIS.net contrasts these tariffed "meeting-competition" provisions with the lack of tariffed safeguards for BellSouth's use of CSAs.

There are, of course, key differences between telecommunications and gas utilities. Gas utilities' special contracts providing off-tariff prices are approved to protect the ratepayers of these rate-regulated monopoly utilities from even greater loss. Moreover, gas utilities deal with such situations on a relatively rare basis and specify the situations in which special circumstances may apply. In contrast, telecommunications utilities are no longer protected monopolies, and gas utilities generally do not possess an ILEC's power to affect, through its pricing of services, which competitors (in both telecommunications and Internet service) are able to survive.<sup>16</sup> Accordingly, we do not

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<sup>14</sup> An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers (Order dated May 29, 1987).

<sup>15</sup> SPIS.net Brief at 15.

<sup>16</sup> Hopkinsville Electric and SPIS.net are competitors who are located very near to each other. In fact, they are on the same street.

find the existence of gas utility contracts that provide lower than tariffed prices dispositive here, and look to other sources for guidance.

In National-Southwire Aluminum Co. v. Big Rivers Electric Corp., Ky. App., 785 S.W.2d 503, 514 (1990), the Kentucky Court of Appeals explained that, when considering whether an unreasonable utility preference has occurred, the Commission must look to "the nature of the use, the quantity used, the time when used...and any other reasonable consideration."

BellSouth, in its Statement of Generally Available Terms on file with the Commission, Document #431055v3, provides a strikingly similar set of criteria when, in explaining that CSAs may be resold to "similarly situated" end-users, it defines "similarly situated" to mean customers whose "quantity of use and time of use, and [whose]...manner and costs of service, are the same." Thus, BellSouth itself does not define "similarly situated" based on the existence of competition to provide the service.

Judicial discussions of CSAs do not include issues involving competition. The federal court for the Eastern District of Kentucky has defined "contract service arrangements" as contracts "between a carrier and a specific, typically high-volume customer, tailored to that customer's individual needs." MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., 40 F.Supp.2d 416 (E.D. Ky. 1999). See also AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc., 7 F.Supp.2d 661, 670-71 (E.D.N.C. 1998) (same definition). Here, the customers' "needs" are the same, even if their bargaining power apparently is not. As the court in Investigation into Three Special Contracts Filed by New England Telephone and Telegraph Co., d/b/a Verizon, 172 Vt. 405, 415, 779 A.2d 693 (2001),



held, an ILEC's "conditional right to seek to enter special contracts under Section 229 [providing, under Vermont law, for special utility contracts] does not trump its statutory duty to offer nondiscriminatory rates to all customers." Id. at 415.

The record before us demonstrates that SPIS.net has requested from BellSouth a "like and contemporaneous service under the same or substantially the same conditions"<sup>17</sup> and that its volume and term commitments are comparable to those of Hopkinsville Electric. SPIS.net should, therefore, receive the same PRI rate as Hopkinsville Electric, retroactive to April 16, 2001, the effective date of the contract into which it entered after Hopkinsville Electric obtained the \$650 rate. We emphasize that our decision today does not prohibit BellSouth, or any other ILEC operating in Kentucky, from providing special rates to similarly situated customers who are eligible for a competitive offer. We simply conclude that pricing the same service differently from customer to customer based on the single difference that one customer has received (or is alleged to have received) an offer is inappropriate pursuant to KRS 278.170.

Our resolution of SPIS.net's complaint is not, however, the end of this matter. The facts brought before us here implicate a number of concerns regarding possibly excessive and inappropriate use of CSAs rather than tariffed rates. Our previous decisions, in which we have relaxed our regulatory authority with the intention of ensuring that Kentucky's ILECs are not unfairly disadvantaged by competition, may bear reconsideration. Accordingly, on this date we open Case No. 2002-00456,<sup>18</sup> and

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<sup>17</sup> KRS 278.170.

<sup>18</sup> Inquiry into the Use of Contract Service Arrangements by Telecommunications Carriers in Kentucky.

incorporate therein the record of this case and Case No. 2001-00077, in which we held BellSouth would be permitted to file monthly summaries of its contracts, rather than the actual CSAs. In Case No. 2002-00456, we will consider whether our determination in Case No. 2001-00077 has improperly denied both customers and competitive local exchange carriers access to information necessary to buy wisely. We also will consider the policy implications of current CSA practices of BellSouth and Kentucky's other LECs; determine whether the public interest demands that we require all CSAs to be filed in the future, thereby ensuring transparency and permitting both customers and CLECs the access necessary to buy and resell services; and determine whether we should set specific standards governing when services may be sold by CSA rather than by generally applicable tariffs.

The Commission having reviewed the record and having been sufficiently advised, IT IS HEREBY ORDERED that BellSouth shall provide PRIs to SPIS.net at the contract terms and conditions specified in the contract with Hopkinsville Electric, and shall provide a billing adjustment reflecting that the Hopkinsville Electric rate became available to SPIS.net as of April 16, 2001.